UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MARVIN ALEXANDER RIVAS RAMOS, Petitioner, vs. KRISTI NOEM, Secretary of Homeland Security, *et al.*, Respondents.	)	Civil Action No. 1:25cv1377

MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR HABEAS CORPUS

Pursuant to this Court's order, respondents, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in opposition to the petition for habeas corpus in the above-captioned action.

INTRODUCTION

Petitioner Marvin Rivas-Ramos here seeks singular relief on a singular basis – immediate release from his civil immigration detention, through this Court's habeas corpus jurisdiction, based on his contention that his initial warrantless arrest pursuant to 8 U.S.C. § 1357(a) by agents of Homeland Security Investigations ("HSI") during a chance encounter in Prince William County ran afoul of constitutional and statutory strictures. But this Court's habeas jurisdiction only extends to the basis of petitioner's "current detention," and within hours of HSI's warrantless arrest, federal immigration officials with the Bureau of Immigration and Customs Enforcement ("ICE") had commenced removal proceedings against petitioner in Immigration Court through a Notice to Appear, and on those grounds, issued a *warrant* and custody determination authorizing petitioner to be detained pending the completion of his removal proceedings. An Immigration

Judge has since concluded that petitioner is not entitled to be released on bond. *This* – which petitioner's instant petition does not challenge – is the basis of petitioner's "current detention." Courts, including the Fourth Circuit and this Court, have recognized that habeas jurisdiction does not extend to a *prior* basis for an individual's detention; instead, all that is relevant is the propriety of the individual's *current* detention. Because the sole argument contained within petitioner's habeas petition is the legality of his initial warrantless arrest, and not the legality of his current detention, this Court should deny the petition.

Even if this Court's habeas jurisdiction could extend backwards to petitioner's initial arrest, HSI agents acted within constitutional and statutory limits in effectuating that arrest. There can be little doubt that the agents – given the information that they learned from other HSI officials at the time of the encounter – had probable cause to believe that petitioner was not lawfully in the United States. And especially given the unexpected nature of the interaction, they also had probable cause to believe that, now alerted to an interest on the part of federal immigration authorities in him, that petitioner would flee before a warrant could be procured.

BACKGROUND

1. Petitioner Marvin Rivas-Ramos is a native and citizen of El Salvador. *Pet.* (Dkt. No. 1), ¶9; *Federal Respondents' Exhibit* ("FREX") A, ¶5. In 2016, at the age of sixteen (16), petitioner unlawfully entered the United States by crossing the southern border near Santa Teresa, New Mexico. *Pet.*, ¶10; FREX A, ¶6. Soon after this entry, a United States Border Patrol agent apprehended petitioner, learning in the process petitioner's age, that he was alone, and that he had no lawful status in the United States. *Pet.*, ¶10; FREX A, ¶7. The Border Patrol agent issued to petitioner a Notice to Appear ("NTA"), which commenced removal proceedings against petitioner in Immigration Court by charging him with being inadmissible to the United States pursuant to 8

U.S.C. § 1182(a)(6)(A)(I) (*i.e.*, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General). *Pet.* ¶12; FREX A, ¶8.

Based on the information that he learned upon petitioner's apprehension, however, the Border Patrol agent also concluded that petitioner was an "unaccompanied alien child" under federal law,[1] which required the agent to "transfer the custody of" petitioner to the Office of Refugee Resettlement ("ORR"), a component of the United States Department of Health and Human Services. 8 U.S.C. § 1232(b)(3); *see also Pet.* ¶10; FREX A, ¶7. Pursuant to federal statute, ORR was then responsible for finding an appropriate "placement" for petitioner; namely, it is statutorily required to place an "unaccompanied alien child" "in the least restrictive setting that is in the best interests of the child," and may not place the child with any "person or entity unless it makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. §§ 1232(c)(2); (c)(3)(A); *see also J.E.C.M. v. Marcos*, 689 F. Supp. 3d 180, 185-89 (E.D. Va. 2023) (providing a comprehensive explanation of ORR's role in the custody and care of unaccompanied alien children). In December 2015, a little more than a month after his original apprehension, ORR "released" petitioner from its custody "to the care" of his uncle, who resided in Manassas. *Pet.*, ¶10 & ex.1.[2]

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[1]Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002), an "unaccompanied alien child" is "a child who – (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

[2]Petitioner alleges that ORR "resettled" him with his uncle and that this purported "resettlement" provided him with some form of lawful status in the United States. *Pet.*, ¶¶10-11; 53. This is patently incorrect. In order to be "resettled" by ORR, an alien must have *already* received a form of "refugee" status in the United States. *See* 45 C.F.R. § 400.43(a) ("An applicant for assistance . . . must provide proof, in the form of documentation issued by [federal immigration authorities], of one of the following statuses under the [Immigration and Nationality] Act as a

2. For the next several years, petitioner's removal proceedings continued before the Immigration Court as a result of several continuances requested by petitioner through his counsel. FREX, ¶10. Ultimately, in February 2024, an Immigration Judge granted petitioner's motion to dismiss those removal proceedings based on a defect in the originally-issued NTA. *Id.* ¶12. But the dismissal of removal proceedings did not provide petitioner with any lawful status in the United States; rather, it just eliminated any *immediate* potential for him to be removed from the United States.

3. On July 22, 2025, agents with Homeland Security Investigations ("HSI") – a law enforcement component of the Department of Homeland Security – were engaged in an investigation involved another individual (*i.e.*, not petitioner). FREX B, ¶6. In conducting law enforcement activities as a part of this investigation, HSI agents encountered petitioner walking with the other individual of interest. *Id.* Given his physical proximity to the target individual, the HSI agents asked petitioner for any documents confirming his identification – petitioner agreed and provided the agents with an employment authorization card issued by United States Citizenship and Immigration Services ("USCIS"). *Id.* ¶7; *Pet.*, ¶18.[3] Petitioner also informed the agents that he had a child but was not married and his parents were in El Salvador. FREX B, ¶8.

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condition of eligibility."). Petitioner has not been afforded any such status and his instant petition does not allege otherwise; nor could it, given that ORR is not an immigration agency and is unable to confer lawful immigration status in the United States. In fact, the unaccompanied alien children for whom ORR is responsible are *defined* as those *without* "lawful immigration status." *See* 6 U.S.C. § 279(g)(2). As the continuation of his removal proceedings demonstrate, petitioner has had no legal status in the United States since his unlawful entry; even the document through which ORR released petitioner to his uncle required the latter to acknowledge his "responsibility for ensuring [petitioner's] presence at all future proceedings before the Department of Homeland Security and the Department of Justice/Executive Office for Immigration Review." *Pet.*, ex.1. In short, ORR simply released petitioner – as a minor legally unable to care for himself – from its care to the care of his uncle.

[3]As an aside, the mere approval of an application for employment authorization does not provide an alien with lawful status in the United States. For example, aliens who have filed

Using the information that petitioner provided, the HSI agents on the scene communicated via telephone with additional HSI personnel located at a DHS facility. FREX B, ¶9. After reviewing DHS records, these additional personnel confirmed petitioner's identity and informed the on-scene agents that petitioner had both entered the United States without inspection and had not obtained lawful status in the United States (or become a naturalized United States citizen) since that unlawful entry. *Id.* The on-scene agents also determined that petitioner was a flight risk, based on his limited family ties in the United States, lack of any visa petition filed on his behalf by a family member, and his prior unlawful entry into the United States. *Id.* ¶10. Accordingly, the on-scene agents concluded that they could effect a lawful warrantless arrest of petitioner, pursuant to 8 U.S.C. § 1357(a)(2), on civil immigration charges.

After they placed petitioner under arrest, the on-scene agents transported petitioner to a facility operated by Immigration and Customs Enforcement ("ICE") in Chantilly. *Id.* ¶11. During his time at Chantilly, and within hours of his initial arrest, ICE issued petitioner three formal administrative documents. *First,* ICE issued a new NTA to petitioner, commencing new removal proceedings against him by charging him with being inadmissible to the United States (and thus removable from the United States) pursuant to: (a) 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and (b) 8 U.S.C. § 1182(a)(7)(B)(i)(I), as a non-immigrant alien who was not in possession of a passport that would allow him to return to his country of origin. *Pet.*, ¶¶23-24 & ex.11; FREX A, ¶14. *Second*, a properly-issued administrative warrant for petitioner's arrest (Form I-200). FREX B, ¶12. And

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applications for certain immigration benefits that would confer lawful status if *approved* (*e.g.*, asylum, temporary protected status) may obtain employment authorization while such an application remains pending. *See* 8 C.F.R. § 274a.12(c).

third, a determination by ICE that petitioner would be detained – and not released on bond – pending the completion of his removal proceedings. FREX D. After the conclusion of his processing, ICE detained petitioner at the Farmville Detention Center. *Pet.*, ¶5.

4. On August 4, 2025, petitioner filed two motions in Immigration Court within the auspices of his pending removal proceedings.

Petitioner first moved for the termination of his new removal proceedings, asserting that his arrest was unlawful and that United States Citizenship and Immigration Services ("USCIS") should have the opportunity to adjudicate his application for asylum in the United States. *Pet.*, ¶26. The presiding Immigration Judge denied that motion two weeks later, holding that it lacked jurisdiction to opine on the constitutional propriety of petitioner's arrest (even assuming that such an assertion could somehow impact the propriety of removal proceedings, *see Hung v. United States*, 617 F.2d 201, 202 (10th Cir. 1980)) and that it enjoyed concurrent jurisdiction with USCIS over the asylum application. FREX B, ¶15.

Petitioner also filed a motion for custody redetermination, challenging ICE's determination that he would not be released on bond during the pendency of his removal proceedings. FREX B, ¶16. At a hearing held on August 7, 2025, the presiding Immigration Judge also denied this motion, holding that petitioner was properly subject to mandatory detention (*i.e.*, detention without the prospect of bond) pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶17. The presiding Immigration Judge followed this oral order with a more detailed written memorandum order on August 15, 2025, which explained that under Board of Immigration Appeals ("BIA") authority, petitioner is properly considered an "applicant for admission" because he was apprehended by federal immigration officers "shortly after [his] unlawful entry" across the southern border. *Pet.*, ¶28 & ex.13 (quoting *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025)). Petitioner noticed an appeal of

the Immigration Judge's bond order to the BIA – that appeal remains pending at this time. FREX B, ¶18.

5. On August 20, 2025, petitioner commenced this matter, which he brings exclusively as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. *Pet.*, ¶1. And in turn, that petition is exclusively premised upon petitioner's argument that his initial warrantless arrest by HSI agents in July 2025 ran afoul of the Fourth Amendment. *Id.* ¶¶2; 30-53. More specifically, petitioner argues that federal immigration officials have limited statutory authority to effect a warrantless arrest of an alien who is removable from the United States, *id.* ¶¶32-34 (citing 8 U.S.C. § 1357(a)), and that the circumstances attending his arrest did not fall within the ambit of that authority, *id.* ¶¶43-47. In the end, petitioner simply "requests that this Court order his immediate release." *Id.* p.12 ("Prayer for Relief").[4]

This Court subsequently entered an order to show cause, requiring the United States to file a response to the petition.[5]

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[4]Although petitioner also asks that this Court "declare" petitioner's initial arrest to be constitutionally invalid, *Pet.*, at p.12, independent relief in the form of a declaratory judgment is not available in habeas proceedings brought pursuant to § 2241, *see Watson v. U.S. Parole Comm'n*, 869 F. Supp. 2d 145, 150 (D.D.C. 2012); *Mills v. Poole*, 2007 WL 3232489, at *2 (W.D.N.Y. Oct. 31, 2007). If petitioner wished to seek such relief, he was required to file a traditional civil action seeking entry of a declaratory judgment and effectuate proper service of that civil action, which, *inter alia*, would provide federal immigration authorities with 60 days within which to respond pursuant to the Federal Rules of Civil Procedure.

[5]Petitioner has also sought a continuance of removal proceedings in Immigration Court because of the instant habeas proceedings in this Court. FREX B, ¶21. As this Court is well aware, *see Doe v. Perry*, 2022 WL 1837923, at *2 n.1 (E.D. Va. Jan. 31, 2022), the instant petition – however this Court ultimately adjudicates petitioner's request for habeas relief – can have no substantive impact on petitioner's pending removal proceedings. *See* 8 U.S.C. §§ 1252(b)(9); (g); *see also Trabelsi v. Crawford*, 2024 WL 5497113, at *6 (E.D. Va. Dec. 2, 2024) (holding, with respect to habeas petition, that through § 1252(b)(9), Congress precluded district courts from exercising jurisdiction over questions concerning "whether petitioner is properly considered an applicant for admission and whether he is properly involved in removal proceedings").

ARGUMENT

The instant habeas petition should be either dismissed or denied. *First*, the sole basis of petitioner's argument – that his *initial warrantless arrest* on civil immigration grounds was unlawful – is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of petitioner's *current detention*. *Second*, even if this Court could exercise habeas jurisdiction over petitioner's initial arrest, the HSI agents who unexpectedly encountered petitioner on a Prince William County street had probable cause to believe that he was unlawfully present in the United States and was likely to escape before a warrant could be obtained, as required by federal statute.

I. HABEAS CORPUS JURISDICTION EXTENDS ONLY TO THE BASIS OF PETITIONER'S "CURRENT DETENTION"

A. PETITIONER CHALLENGES THE LAWFULNESS OF HIS INITIAL ARREST INSTEAD OF HIS "CURRENT DETENTION"

The instant matter comes before this Court solely as a petition for a writ of habeas corpus, brought pursuant to 28 U.S.C. § 2241. *Pet.*, ¶1. Despite the storied nature of what has been dubbed the "Great Writ," *Bell v. Streeval*, 147 F.4th 452, 460-61 & n.8 (4th Cir. 2025), the breadth of this Court's § 2241 habeas jurisdiction has significant limitations. In particular, "habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see also Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020).

It is for this reason that, as the Supreme Court has held, "the great and central office of the writ of habeas corpus is to test the legality of a prisoner's *current detention*." *Walker v. Wainwright*, 390 U.S. 335, 337 (1968) (emphasis added). But petitioner here does not challenge the lawfulness of his current *detention*; rather, he challenges the lawfulness of his *initial*

warrantless *arrest*. This distinction between the *initial arrest* of an alien and his *continued* detention (as opposed to release) is made plain by both the statute governing civil immigration detention before the entry of a final order of removal against a particular alien and the circumstances of petitioner's own detention. Take the statute first:

> [A]n alien may be *arrested and detained* pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General –
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> (1) may continue to *detain* the *arrested* alien; and
>
> (2) may release the alien on –
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole.

8 U.S.C. § 1226(a) (emphasis added); *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal."); 8 C.F.R. § 236.1 (regulation entitled "Apprehension, custody, and detention"). The governing statute and regulation thus differentiate between an alien's initial apprehension (or "arrest") and a decision by federal immigration authorities to continue an alien's detention beyond that initial apprehension. *See Soliman v. Gonzales*, 419 F.3d 276, 283 (4th Cir. 2005) ("Where Congress has utilized distinct terms within the same statute, the applicable canons of statutory construction require that we endeavor to give different meanings to those different terms.").

Even putting the technical nature of the statutory and regulatory language aside, the pragmatic reality of petitioner's own circumstances highlights how his instant habeas challenge to his initial warrantless arrest is divorced from the basis of his "current detention." As identified above, and analyzed in greater detail below, *see infra* Part II, the HSI agents who unexpectedly

encountered petitioner in Prince William County arrested him without a warrant based on the conclusion that, consistent with 8 U.S.C. § 1347(a), he had no lawful status in the United States and was likely to flee before federal immigration authorities could obtain a warrant for his arrest. But within hours, these circumstances changed – consistent with the above statutory and regulatory provisions, after his initial apprehension by HSI agents, ICE officials: issued to petitioner a NTA (which commenced removal proceedings against petitioner in Immigration Court); based on that NTA, obtained and served upon petitioner a *warrant* for his arrest (through Form I-200); and issued a custody determination reflecting its subsequent decision to detain petitioner rather than release him on bond. *See* 8 C.F.R. § 236.1(b)(1) ("At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest."). Accordingly, petitioner's "current detention" is not premised upon the sole challenge presented in his instant habeas petition – his initial *warrantless* arrest by HSI agents based on probable cause to believe that he had no lawful status in the United States pursuant to 8 U.S.C. § 1347(a); rather, petitioner's "current detention" is premised upon an issued *warrant* for his arrest pursuant to 8 U.S.C. § 1226(a),[6] because of the commencement of removal proceedings against him.[7] Because

[6]Although § 1226(a) provided ICE with the statutory authority to issue a warrant to place petitioner in custody, as noted above, the statutory authority for petitioner's current detention (without the possibility of release on bond) is found in § 1225(b)(2)(A), because – as the presiding Immigration Judge recently held – petitioner, who has never effected a lawful entry into the United States, remains an "applicant for admission." *Pet.*, ex. 11; *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 227-28 (BIA 2025) (holding that the issuance of an arrest warrant under § 1226(a) does not preclude the conclusion that an alien's detention is mandatory because "being arrested pursuant to a warrant and placed in removal proceedings does not constitute an admission" into the United States")

[7]With no intent to be flippant about this Court's habeas jurisdiction, and although not a *legal* basis to deny the instant petition, the pragmatic reality of petitioner's request for habeas relief here bears mentioning. Put simply, even if this Court ordered petitioner's release based on the conclusion that his initial apprehension was unlawful, federal immigration authorities could issue

petitioner does not challenge the propriety of his "current detention," this Court should deny the petition.

It is likely for these reasons that undersigned counsel's research did not uncover any decision in which a federal court exercised habeas jurisdiction pursuant to § 2241 to review the propriety of an alien's initial arrest or apprehension by federal immigration authorities.[8] Indeed, quite to the contrary, at least one court has concluded that habeas jurisdiction would not lie under analogous circumstances. In *Solano v. ICE*, 2021 WL 4539860 (C.D. Cal Sept. 1, 2021), an individual alien brought a putative class action to challenge ICE's use of private contractors to effectuate initial arrests, arguing that such contractors were "not authorized under" federal statute "to make either warrantless arrests or to make arrests based on warrants." *Id.* at *1. The District Court allowed the action to proceed, concluding that plaintiff could not present her claim through "a federal habeas petition . . . because [she] challenge[d] the manner of her arrest, not her immigration detention." *Id.* at *7 (emphasis omitted). The same is true here – petitioner challenges not his current "immigration detention," but "the manner of [his] arrest."

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a new administrative arrest warrant based on the continued pendency of petitioner's removal proceedings, immediately re-serve the arrest warrant on petitioner the moment he left the detention facility pursuant to this Court's order, and take him back into civil immigration custody.

[8]Nor, by identifying the limits on this Court's habeas jurisdiction, are the federal respondents suggesting – in any way – that the constitutional and statutory strictures governing the authority of federal immigration officers to effectuate initial arrests are unimportant or generally unreviewable by the federal courts. The position advanced here is simply that the sole basis on which petitioner has invoked this Court's jurisdiction – § 2241 habeas – is unavailable to secure release from his current detention. That said, the federal respondents will not speculate here on the propriety of other legal theories on which aliens might secure review of an initial arrest or apprehension. *See, e.g.*, *United States v. Segura-Gomez*, 2018 WL 6582823, at *5-10 (E.D.N.C. May 25) (addressing propriety of warrantless arrest pursuant to § 1357(a) within context of motion to suppress post-arrest statements in subsequent federal criminal action), *adopted*, 2018 WL 6259222 (E.D.N.C. Nov. 30, 2018).

To anticipate petitioner's retort, nor is it pertinent that his initial warrantless arrest started the chain of causation – to borrow a term from tort law – to his current immigration detention. Both the Fourth Circuit and this Court have rejected habeas jurisdiction under such circumstances – this Court explicitly. First, in *D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016), an individual who was initially apprehended by Border Patrol officers brought a habeas petition challenging, *inter alia*, those officers' conclusion that he fit the statutory definition of an "unaccompanied alien child" ("UAC") at the time of that initial apprehension. *See id.* at 726-28. The Fourth Circuit held that, regardless of the propriety of the individual's initial apprehension, the only pertinent habeas question was whether the child's then-current circumstances rendered him an "unaccompanied alien child" subject to government custody:

> We need not address the propriety of the Border Patrol's initial UAC determination with respect to R.M.B. The question before the district court – and now before us – is whether R.M.B.'s current detention complies with federal statutes and the Constitution. Even if the Border Patrol incorrectly found R.M.B. to be a UAC, the Office [of Refugee Resettlement]'s subsequent determination that Beltrán is not capable of providing for R.M.B.'s physical and mental well-being establishes her unavailable, and thus confirms R.M.B.'s present status as a UAC.

Id. at 734 n.10. And this Court expressly rejected this theory in *Doe*; there, petitioner's habeas petition challenged the propriety of his then-current detention under § 1226. *Doe*, 2022 WL 1837923, at *1. During the pendency of the petition, however, petitioner received a final order of removal, thus changing the legal basis of his detention from § 1226 to § 1231(a). *Id.* Despite petitioner's argument that "his 'ongoing detention remain[ed] a direct, downstream effect of' the alleged constitutional violations that led to his detention pursuant to [§] 1226," this Court held that it could not exercise habeas jurisdiction to review the constitutionality of petitioner's prior § 1226 detention; rather, its jurisdiction was limited to the precise question of the propriety of petitioner's *current* detention in § 1231. *Id.* at *2.

B. PETITIONER DOES NOT – AND COULD NOT IN ANY EVENT – CHALLENGE HIS CURRENT DETENTION

As noted above, it is rather clear that the sole premise of the instant petition is the propriety of petitioner's initial warrantless arrest by HSI agents in Prince William County. *Pet.*, ¶42 ("The DHS ICE agents arrested [petitioner] on July 22, 2025 outside the Prince William County Judicial Center without legal authority and in violation of his Fourth Amendment right against an unreasonable seizure."); *see also id.* ¶¶32-36 (discussing the legal parameters of the authority of federal immigration officers to effectuate warrantless arrests pursuant to § 1357(a)). And because the instant petition does not expressly challenge the different basis of his current detention, the federal respondents need go no further than the above jurisdictional analysis in responding to the petition. In an abundance of caution, however, and given a few cryptic remarks in the petition, the federal respondents will explain why this Court cannot – or should not – entertain issues related to petitioner's pending removal proceedings.

1. This Court Lacks Jurisdiction to Adjudicate Whether Petitioner Is Properly in Removal Proceedings

Petitioner's current detention is premised upon a warrant issued to him after he was placed in removal proceedings through an NTA charging him with being inadmissible to the United States. Although, as noted above, the gravamen of the instant petition is petitioner's earlier warrantless apprehension by HSI agents, the petition includes a stray remark to the effect that petitioner "is lawfully present [in the United States] because he was resettled into the Untied States as a refugee child from El Salvador." *Id.* ¶53. Because this remark suggests that petitioner believes that he should not be subject to removal proceedings – and his current detention is based on the pendency of those removal proceedings – the federal respondents will address the issue here.

Initially, for the reasons stated above, *see supra* n. 2, petitioner's position that he has lawful status in the United States is meritless. But more importantly, because this is a question of law that will arise in petitioner's pending removal proceedings – in fact, if correct, petitioner's position would render him not subject to removal from the United States – this Court lacks jurisdiction to consider the issue in these habeas proceedings.

In 1996, Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), a statute that "significantly restructur[ed] the scope of judicial review of immigration decisions." *Humphries v. Various Fed. USINS Employees*, 164 F.3d 936, 941 (5th Cir. 1999); *see also Hatami v. Ridge*, 270 F. Supp. 2d 763, 767 (E.D. Va. 2003). Certain IIRIRA provisions divest the district courts of jurisdiction to review particular immigration actions or decisions as part of an intricate statutory scheme that channels all Article III judicial review into the courts of appeals. *See Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999). And importantly, through the REAL ID Act of 2005, see Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Congress explicitly included habeas petitions brought pursuant to § 2241 with these "jurisdiction stripping" provisions. *See, e.g.*, *Fernandez v. Keisler*, 502 F.3d 337, 346 (4th Cir. 2007).

At issue here is 8 U.S.C. § 1252(b)(9), which provides as follows:

> Judicial review of *all questions of law and fact*, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the United States under this subchapter shall be available only in judicial review of a final order under this section [i.e., in the circuit courts of appeal]. Except as otherwise provided in this section, no court shall have jurisdiction by habeas corpus under section 2241 of title 28 or any other habeas corpus, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order *or such questions of law or fact.*

Id. (emphasis added). The Supreme Court has defined this provision as "the unmistakable 'zipper' clause" that channels into the court of appeals exclusive judicial review of all actions taken or decisions rendered within the auspices of removal proceedings. *Reno v. American-Arab Anti-*

Discrimination Comm., 525 U.S. 471, 485 (1999). Nor is § 1252(b)(9) limited to judicial review of an *actual* removal order – it precludes district court jurisdiction over any "questions of law or fact . . . arising from any . . . proceeding brought to remove an alien." *Minas-Urbina v. Barr*, 2020 WL 3002344, at *4-5 (E.D. Va. June 4, 2020). Put simply, "Congress has specifically prohibited the use of habeas corpus provisions as a way of obtaining review of questions arising in removal proceedings." *Johnson v. Whitehead*, 647 F.3d 120, 124 (4th Cir. 2011).

Consistent with these principles, district courts have repeatedly held that they lack jurisdiction to consider a habeas challenge to detention as a result of the pendency of removal proceedings when the specific basis of the detention challenge is "inextricably linked" with "the procedure and substance of an agency determination" on whether an individual is to be removed from the United States. *Duncan v. Kavanagh*, 439 F. Supp. 3d 576, 585 (D. Md. 2020) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)); *see also P.L. v. ICE*, 2019 WL 2568648, at *2 (S.D.N.Y. June 21, 2019) ("Where immigrants in removal proceedings seek to directly or indirectly challenge removal orders or proceedings . . . district courts do not have jurisdiction."). *Duncan*, in fact, provides an excellent case study of this principle; there, after the Immigration Court concluded that an individual in removal proceedings was subject to mandatory detention, the individual challenged that detention decision in federal district court on the basis that he was actually a United States citizen and thus fell outside of § 1226(c) (which applies only to aliens). *See id.* at 581. The District Court held that § 1252(b)(9) precluded jurisdiction over the habeas petition because the basis of the detention challenge was inextricably intertwined with the merits of the underlying removal proceedings:

> Duncan argues the question of whether his detention violates due process differs from the question of whether he is removable. While technically these *are* separate questions, the court cannot answer the former question without implicating the latter. The relief Duncan requests necessarily requires a finding by this court that he is a U.S. citizen. Such a finding,

> of course, would mean that Duncan is not removable. A finding of non-removability on the basis of U.S. citizenship, then, is the substance of the relief Duncan seeks both in this proceeding and in his removal proceedings.

Id. at 585-86 (emphasis in original).

In short, even if petitioner had challenged the basis of his current detention in his instant petition, this Court would lack jurisdiction to consider the same.

2. This Court Should Exercise Its Discretion Not to Address Whether Petitioner is Entitled to a Bond Hearing in Immigration Court

Also as noted above, the presiding Immigration Judge concluded that petitioner was not eligible for discretionary release on bond during the pendency of his removal proceedings because he remained an "applicant for admission" subject to mandatory detention pursuant to the BIA's recent construction of 8 U.S.C. § 1225(b)(2)(A). *Pet.*, ex.13 (citing *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025)).[9] In another stray remark within his petition, petitioner seems to criticize the application of § 1225(b)(2)(A) to him, stating that "[t]he individuals subject to being detained under [§ 1225(b)(2)(A)] are people attempting to enter the United States." *Id.* ¶36. Leaving aside the fact that this statutory phrase describes petitioner's circumstances (*i.e.*, he was apprehended by Border Patrol agents during his effectual [and unlawful] entry into the United States), even were petitioner correct, it would not require his immediate release from civil immigration detention; rather, it would only entitle petitioner to a bond hearing before the presiding Immigration Judge. But petitioner does not seek an order compelling a bond hearing in Immigration Court. *Id.* at p.12 ("Petitioner requests that this Court order his immediate release"). For this reason, the federal

[9]Additionally, a mere three days ago (on September 5, 2025), the BIA held that "aliens who are present in the United States without admission are applicants for admission for purposes of mandatory detention pursuant to § 1225(a)(2)(A), even one in petitioner's circumstances – *i.e.*, one who has spent an "undefined period of time residing in the interior of the United States without lawful status." *Yajure Hurtado*, 29 I. & N. Dec. at 220-21.

respondents will not provide a detailed analysis of why petitioner is subject to mandatory detention under § 1225(b)(2)(A).[10]

In any event, even if it were fairly presented within the instant petition, this Court should exercise its discretion not to address the issue before petitioner fully exhausts his available (and pending) administrative remedies with respect to the issue. Unlike in other contexts, this Court's habeas jurisdiction does not depend upon an alien's full exhaustion of available administrative remedies – most often with the BIA; rather, whether to await such exhaustion is left to this Court's discretion. *See, e.g.*, *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022). But this serves as the paradigmatic example of an instance in which this Court should stay its hand while the BIA adjudicates petitioner's position – *i.e.*, whether the circumstances of petitioner's unlawful entry into the United States and his current removal proceedings serve as an exception to the BIA's recent construction of the relevant federal statute. Petitioner has noticed an interlocutory appeal from the presiding Immigration Judge's denial of his request for release on bond to the BIA, and this Court should allow that appeal to run its course before intervening.

* * *

In the end, this Court lacks habeas jurisdiction to review the propriety of petitioner's initial warrantless arrest by HSI agents pursuant to § 1357(a) because his *current* detention is premised on a different statutory basis borne of subsequent circumstances; namely, the issuance of a warrant as a result of the commencement of removal proceedings against him. Because the instant petition only challenges the circumstances of petitioner's initial warrantless arrest, and those circumstances no longer serve as the basis of his "current detention," this Court should dismiss the same.

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[10]Of course, if this Court ultimately concludes that this issue is presented within the petition and wishes for the federal respondents to supply that analysis, it will be provided in extremely short order.

II. HSI AGENTS POSSESSED CONSTITUTIONAL AND STATUTORY AUTHORITY TO EFFECT A WARRANTLESS ARREST OF PETITIONER WHEN THEY UNEXPECTEDLY ENCOUNTERED HIM IN PRINCE WILLIAM COUNTY

Even if this Court could somewhat exercise habeas jurisdiction to adjudicate the propriety of petitioner's initial warrantless arrest – despite the fact that his current detention is based on different circumstances (including the issuance of a warrant) – that arrest was constitutionally and statutorily sound. As described in greater detail below, based on the objective information they possessed at the time, the HSI agents had probable cause to believe that petitioner was in the United States in violation of law or regulation and was likely to escape before a warrant could be obtained for his arrest.

A. GENERAL STANDARDS

Congress has vested federal immigration officers with the authority to effectuate warrantless arrests under certain enumerated circumstances. *See generally* 8 U.S.C. § 1357(a). Of import here, those circumstances include those that would lead to the presentment of civil immigration charges against an alien through administrative removal proceedings:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant –
>
> . . . .
>
> (2) to arrest any alien . . . if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation [regulating the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest.

Id. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c).[11] As one court has cogently put it, "there are two requirements" for exercise of this statutory authority: "the officer must have 'reason to believe'

[11]The relevant regulations list HSI agents – as "[i]mmigration enforcement agents" – as amongst those federal immigration officials who are empowered to exercise the above-conferred statutory authority. *See* 8 C.F.R. § 287.5(c)(1).

[(1)] that the alien is in the United States in violation of the immigration laws or related regulations and [(2)] the alien is 'likely to escape' before a warrant can be obtained." *Segura-Gomez*, 2018 WL 6582823, at *5. And in order for § 1357 to comport with the Fourth Amendment, courts have read the statutory phrase "reason to believe" to be "equivalent to . . . probable cause." *Id.* at *6 (citing *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015)). Thus, to effectuate a constitutionally-proper warrantless arrest, an immigration officer must have sufficient "facts and circumstances . . . that are sufficient to warrant a prudent person, or one of reasonable caution, in believing" that the two things identified in § 1357(a)(2) exist. *Id.* (quoting *Cahaly v. Larosa*, 796 F.3d 399, 407 (4th Cir. 2015)).

B. HSI Agents Had Probable Cause to Believe that Petitioner Was Unlawfully Present in the United States and Was a Flight Risk

In order to comply with both constitutional and statutory strictures, HSI needed probable cause to believe that petitioner was (1) unlawfully present in the United States; and (2) was likely to flee before a warrant could be procured. The objective facts and circumstances known to the HSI agents at the time that they effectuated petitioner's warrantless arrest satisfied these requirements.

1. The first of these requirements – probable cause to believe that petitioner was unlawfully present in the United States – is hardly controversial and easily established. As one of the HSI agents present for petitioner's arrest has now testified, before the arrest he did not simply rely on petitioner's mere statement that he was in possession of a USCIS work authorization document to make a conclusion about his status in the United States; rather, he called another HSI employee, who checked agency records and relayed to the agent that petitioner had entered the United States unlawfully and without inspection, and had not adjusted his status to that of a lawful permanent resident or become a naturalized United States citizen. Even if this Court could reach the question

given the aforementioned statutory jurisdiction-stripping provisions, that information more than establishes probable cause to believe that petitioner was within the United States unlawfully.

2. The remaining question is whether the HSI agents had probable cause to believe that petitioner would flee (or escape) before a warrant could be obtained for his arrest. At the outset, although courts have appropriately noted that "[t]he likelihood-of-escape limitation is 'seriously applied,'" *United States v. Davila*, 247 F. Supp. 3d 650, 668 (W.D. Pa. 2017) (quoting *United State v. Cantu*, 519 F.2d 494, 497 (7th Cir. 1975)), "[b]ecause of the difficulty of making an on-the-spot determination as to the likelihood of escape without any opportunity to verify information provided or to conduct a full-scale interview, 'an [] officer's determination will not be upset if there is any reasonable basis for it.'" *Contreras v. United States*, 672 F.2d 307, 308 (2d Cir. 1982) (quoting *Marquez v. Kiley*, 436 F. Supp. 100, 108 (S.D.N.Y. 1977)). The HSI agents here had a "reasonable basis" for their conclusion about petitioner's likelihood to flee.

Context is everything on this score. As the HSI agent learned during his temporally-limited interaction, petitioner had no lawful status in the United States, no adult family members in the United States, and no pending visa applications filed on his behalf by any such family members. Additionally, at the time of petitioner's encounter with HSI agents in Prince William County – in conjunction with another individual who was a subject of an HSI investigation – his long-pending removal proceedings had somewhat recently been dismissed without affording petitioner any lawful status in the United States. As courts have recognized, an interaction with immigration officials, let alone soon after the termination of such removal proceedings – could be the source of significant apprehension on the part of an alien unlawfully present in the United States:

> The incentive to flee peaks once the criminal alien knows that ICE has decided to come after him. And while the incentive may be depressed while ICE ignores the alien, once ICE manifests an intention to proceed forthwith, the incentive to flee before the deportation proceeding ends would seem to be correlated to any delay in making that manifestation.

Castenada v. Souza, 810 F.3d 15, 61 (1st Cir. 2015) (opinion of Keyatta, J.).[12]

Unlike other opinions in the Fourth Circuit, in which jurists have held probable cause of flight risk absent, the HSI agents here did not have the luxury of *choosing* when to encounter petitioner (and alert him to the interest of federal immigration officials) – something that automatically suggests the ability to secure a warrant before apprehension. *See, e.g.*, *United States v. Harrison*, 168 F.3d 483, 1999 WL 26921, at *4 (4th Cir. Jan. 25, 1999) (per curiam) (holding that there was insufficient indicia of flight risk because "there [was] no evidence that Harrison was traveling," and that "[t]o the contrary, the bondsmen had been to his house several times and found him there each time"). This was certainly the case in *Segura-Gomez*; there, federal immigration officials had engaged in significant surveillance of the subject alien before approaching him. *See Segura-Gomez*, 2018 WL 6582823, at *7 ("Defendant did not then manifest any intention to escape. To the contrary, he went to a restaurant near the courthouse to eat lunch. The agents themselves did not deem him an escape risk at that point sufficient to arrest him. Instead, they let him eat lunch."). And most importantly:

> Certainly, the record does not show that the period between the agents' observation of defendant's departure and their encounter with him was so short – say, a minute or two – to have made acquisition of a warrant impossible. And, of course, there is no indication that defendant's conduct or other circumstances compelled the agents to approach defendant when they did.

[12]The federal respondents recognize that petitioner here is not a "criminal alien." Although *Castenada* dealt exclusively with criminal aliens, the logic of the aforementioned discussion applies equally to non-criminal aliens.

Id. at *8. The direct opposite was present here – the HSI agents did not expect to encounter petitioner when they did, and they had an extremely limited time within which to make their ultimate determination.[13]

In short, HSI agents had, at the very least, probable cause to believe that petitioner would be likely to escape if they were required to let him leave their encounter so that they could obtain an administrative warrant for his arrest.

CONCLUSION

For the foregoing reasons, this Court should deny the instant petition for a writ of habeas corpus.

Respectfully submitted,

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DATE: September 8, 2025

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[13]Of course, the unexpected nature of the HSI agents' encounter with petitioner alleviates the concern – expressed by at least one court – that federal immigration authorities could *intentionally* trigger an alien's "desire to flee" by announcing their interest in his presence in the United States, thus "render[ing] the 'likelihood of the person escaping' clause of the statute meaningless.'" *United States v. Bautista-Ramos*, 2018 WL 5726236, at *8 (N.D. Iowa Oct. 15), adopted, 2018 WL 5723848 (N.D. Iowa Nov. 1, 2018).

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

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